

### REMARKS

This Application has been carefully reviewed in light of the Office Action mailed on September 3, 2008 ("Office Action"). Claims 68 and 70-77 are pending in the Application and stand rejected. Claims 68 and 75-77 have been amended without adding new subject matter. Claims 78-88 are new.<sup>1</sup> Applicants respectfully request reconsideration and favorable action in this case.<sup>2</sup>

#### Response to Claim Rejections – 35 U.S.C. § 103

Claims 68, 70-74, 76 and 77 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,072,380 to Randelman *et al.* ("*Randelman*"). Applicants respectfully traverse these rejections for the comments set forth below,<sup>3</sup> because *Randelman*, either alone or in combination, fails to teach or suggest each and every element of amended claim 68 and, further, any modification of *Randelman* to account for its deficiencies would not have been obvious to one of ordinary skill in the art.

As one example of the deficiencies in this reference, *Randelman* fails to teach or suggest "a short-range antenna integral to a first dispenser," as recited in amended claim 68. *Randelman* does not teach that the antennae (2) of its system is integral to any system component (as opposed to the fueling station generally), to say nothing of a first dispenser of a plurality of dispensers as required by amended claim 68. Rather, *Randelman* teaches that the antennae (2):

is embedded in the proximity of the gasoline dispensing pump or area (3). . . .  
Other areas considered to be service areas include a pump area, bay service area, vending or convenience store area, or any other area within the confines of the station property. This antennae (2) is connected to an electronics box, termed a controller (4), that controls the radio frequency (RF) output signal and detects an RF input signal. . . . The controller may be located in a housing (5) near the

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<sup>1</sup> Applicants respectfully submit that support for the amendments may be found at, for example, page 8, line 22 through page 9, line 2; page 16, lines 12-20; pages 11-19; and Figs. 1, 4A, 4B, 5A, and 5B of the Application.

<sup>2</sup> Applicants thank the Examiner for previously allowing claims 25, 27-32, 50-51 and 53-57.

<sup>3</sup> Applicants reassert the previous arguments to prior Office Actions regarding *Randelman*. For example, Applicants reassert that *Randelman* fails to teach or suggest identifying individual customer accounts and, in fact, merely teaches identifying vehicles irrespective of the driver for fleet billing. *See Randelman* at 3:13-29. In particular, *Randelman* states, "Whereas a credit card or debit card identifies a particular individual customer, the present invention is a system which identifies a particular vehicle *irrespective of the vehicle operator*." *Id.* at 3:22-25. In other words, *Randelman* specifically teaches away from identifying customers accounts as claimed claim in amended claim 68.

antennae. For example, the housing (5) may be fixed to a support or an overhead canopy.

*Randelman* at 2:32-46 (emphasis added). Thus, *Randelman* teaches, generally, that its antennae (2) is mounted so as to cover one or more specific areas of the entire fueling station area by, for example, mounting it to the station structure.

As another example of the deficiencies in *Randelman* as compared to amended claim 68, *Randelman* fails to teach or suggest a “predetermined operable range up to about six inches extending substantially perpendicular to the surface of the first dispenser,” as recited in this claim. Indeed, *Randelman* is silent as to the operable range of its antennae (2) as well as its directional capabilities relative to any surface of the fueling station, to say nothing of a dispenser surface. *Randelman*’s teachings, however, strongly suggest that the antennae (2) does not have a “predetermined operable range up to about six inches” and that the direction of any EM field created by the antennae (2) does not extend “substantially perpendicular” to a dispenser surface. As noted above, *Randelman*’s teachings suggest that the antennae (2) is attached to the station structure. Given typical structure dimensions (e.g., height), an EM field with a predetermined operable range up to about six inches would be virtually useless in *Randelman*’s system, since only the tallest and/or largest vehicles entering *Randelman*’s station would enter such an EM field. The rest of the vehicles would pass under and/or by such a field without being detected, rendering *Randelman*’s system pointless.

Further, if the antennae (2) was positioned at ground level (which *Randelman* does not explicitly disclose), the same problem exists. More specifically, given the various entrance and exit paths of a typical fueling station (a problem of *Randelman*’s system explicitly contemplated in the present Application),<sup>4</sup> many antennae with a predetermined operable range up to about six inches would be required to adequately implement *Randelman*’s system. *Randelman* does not teach or suggest the use of multiple antennae and at most, teaches that two antennae may be used. See *Randelman* at 2:51-54.

Additionally, *Randelman* expressly teaches that the antennae (2) is “always energized and therefore produces an electromagnetic (EM) field in the fueling area.” *Randelman* at 2:49-50

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<sup>4</sup> See Application at 5:21-6:3.

(emphasis added). There is nothing in *Randelman* to suggest that an antennae with a predetermined operable range up to about six inches would produce an EM field to adequately cover an entire fueling area. Applicants submit that to suggest otherwise would be against the clear teachings of *Randelman* and the present Application as understood by one of ordinary skill in the art.

In short, *Randelman* fails to teach or suggest at least a “predetermined operable range up to about six inches extending substantially perpendicular to the surface of the first dispenser,” as recited in amended claim 68, and as explained above, it would not have been obvious to modify *Randelman* to include such a feature. Accordingly, Applicants respectfully request reconsideration and allowance of amended claim 68 and all claims depending therefrom.<sup>5</sup>

Claim 75 stands rejected under § 103(a) as being unpatentable over *Randelman* in view of U.S. Patent No. 4,263,945 issued to Van Ness (“*Van Ness*”). The Office Action fails to show that V accounts for the deficiencies in *Randelman* shown above with respect to amended claim 68, from which claim 75 depends. Applicants, therefore, respectfully request reconsideration and allowance of claim 75.

#### **New Claim 78 is Patentable Over *Randelman***

Applicants have added independent claim 78, which recites in pertinent part:

a first electromagnetic field . . . created proximate the first dispenser surface to wirelessly communicate with hand-held transponders within the predetermined operable range independent of a second electromagnetic field of the predetermined operable range created proximate a second dispenser surface . . . wherein the first electromagnetic field is emitted throughout the predetermined operable range adjacent the second electromagnetic field such that the first electromagnetic field does not overlap the second electromagnetic field

*Randelman* fails to teach or suggest non-overlapping but adjacent electromagnetic fields created by short range antennas proximate to first and second dispenser surfaces. Rather, *Randelman* teaches that, to the extent more than one EM field is created in its system, the multiple EM fields might overlap but do not interfere with each other due to distinct frequencies:

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<sup>5</sup> Applicants respectfully submit that the reasons for patentability for amended claim 68 are equally applicable to new claim 87.

The antennae is always energized and therefore produces an electromagnetic (EM) field in the fueling area. In addition, there is a means of detecting the direction of a vehicle as it approaches the fueling area by using a secondary antennae, computer software and/or hardware. *The EM field is in the radio frequency band and is chosen so as to minimize interference from other electronic or RF sources, such as vehicle ignition systems, lighting, or other RF generating sources.*

*Randelman* at 2:49-57 (emphasis added). Put simply, *Randelman* teaches the use of distinct frequencies in the radio band so as to minimize interference between multiple antennas rather than creating non-overlapping but adjacent electromagnetic fields. Given *Randelman*'s teachings, this deficiency as compared to the claimed feature noted above is not unsurprising. As explained above, *Randelman* teaches that the antennae (2) is embedded in the service station (3) such as in the roadway or overhead of the service station (3), and *not* that the service station (3) is configured with multiple antennas (2) associated with first and second dispenser surfaces such that operable ranges of electromagnetic fields do not overlap. See *Randelman* at 2:30-34; Claims 5-6. In fact, *Randelman* requires that the antenna (2) be embedded in the service station (3) to determine the direction of the vehicle<sup>6</sup> as well as if the vehicle has stopped. See *id.* at 2:51-54; 3:56-4:1; Figure 3. Therefore, *Randelman* fails to teach or suggest this feature of new claim 78. Accordingly, Applicants respectfully request allowance of new claim 78 and its dependents.

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<sup>6</sup> In addition, *Randelman* teaches that a second antenna is required to determine whether the vehicle is entering or exiting the service area. See *Randelman* at 2:51-54; Fig. 2.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. However, the absence of a reply to a specific rejection, issue, or comment does not signify agreement with or concession of that rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

If the present Application is not allowed and/or if one or more of the rejections is maintained, Applicants hereby request a telephone conference with the Examiner and further request that the Examiner contact the undersigned attorney to schedule the telephone conference. Applicants respectfully request consideration of all filed IDSs not previously considered, by initialing and returning each Form 1449.

The required fees for the Continued Examination (RCE) under 37 C.F.R. § 1.114 and a two-month extension of time are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization to Deposit Account No. 06-1050. Please apply all other charges or any credits to Deposit Account No. 06-1050.

Respectfully submitted,

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